

IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Leverett Saltonstall Building
100 Cambridge Street, Boston 02204

January 13, 1984

("Corporation") is a Massachusetts corporation, wholly owned by ("Mr. A"), that is engaged in general contracting and construction. It was organized on or about December 1, 1981. For many years prior to its organization, Mr. A operated the same business as a sole proprietorship.

You inquire whether a transfer by Mr. A to the Corporation of motor vehicles that are used in the business, solely in exchange for shares of the Corporation, will be subject to the use tax. You state that the failure of Mr. A to transfer the vehicles to the Corporation at the time of its organization was an oversight.

General Laws Chapter 64H, Section 2 imposes an excise on sales at retail of tangible personal property in Massachusetts. Chapter 64I, Section 2 imposes an excise on the storage, use or other consumption in Massachusetts of tangible personal property purchased for storage, use or other consumption in Massachusetts.

Casual and isolated sales by a vendor who is not regularly engaged in the business of making sales at retail are exempt from the sales tax (G.L. c. 64H, § 6(c)), but casual and isolated sales of motor vehicles, trailers, boats and airplanes generally are subject to the use tax (G.L. c. 64H, § 6(c); G.L. c. 64I, § 7(b)).

Subdivision (9)(b)(1) of Sales and Use Tax Regulation 830 CMR 64H.02 provides that certain transfers of motor vehicles are not subject to tax if the transferor has

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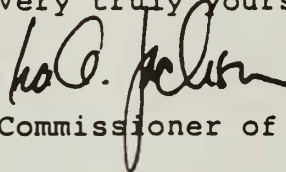
previously paid a sales or use tax on his purchase or use of the vehicle. Those transfers include:

"[t]he transfer of a motor vehicle pursuant to the formation of a partnership or corporate trust, or the organization of a corporation, solely in exchange for an ownership interest in the enterprise."

To fall within the exemption for transfers "pursuant to...the organization of a corporation," a transfer must take place at or about the time the corporation is organized.

Based on the foregoing, it is ruled that the transfer of the motor vehicles by Mr. A to the Corporation, which was organized in 1981, will be subject to the use tax.

Very truly yours,



Commissioner of Revenue

IAJ:JXD:mf

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